HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 219 OF 2004

The Corlim Education Society,
Corlim, Ilhas, Goa, through its
Secretary/President, C/o.
Vidyaniketan High School. ..... Appellant.

V/s.

1. Shri Nicolou M. Dias,
   s/o. Francisco Gauncar, major,
   P.W.D. Contractor, r/o. Arlem,
   Raia, Salcete, Goa.

2. The Government of Goa,
   through the Director of
   Education, St. Inez, Panaji, Goa
   (Deleted by Order dated 27.4.2004). ..... Respondents.

Mr. D. Pangam, Advocate for the appellant.

Mr. M. C. Fernandes, Advocate for respondent No.1.

Mr. M.S. Joshi, Addl. Government Advocate for respondent No.2.

CORAM : A.P. LAVANDE, J.

DATE : March 24, 2005

ORAL JUDGMENT :

By consent and at the request of the parties, the appeal

is taken up for final hearing, although the matter is not on board.

2. Heard Mr. Pangam, learned Counsel for the appellant, Mr Fernandes, learned Counsel for respondent No.1 and Mr. Joshi, learned Addl. Government Advocate for respondent No.2. The appellant was defendant No.1 in Special Civil Suit No.137/1991/A, filed by respondent No.1 herein, in the Court of Civil Judge, Sr. Division, at Panaji. In the said suit, the Government of Goa was defendant No.2. During the pendency of the suit, Government of Goa by Notification dated 16/3/2004 which was published in the Official Gazette (Extraordinary) dated 16.3.2004 amended the Goa Civil Courts Act by Amendment Act, 2004 (hereinafter, referred to as "the Amendment Act"). Section 26A, as amended, reads as under:

> " 26A. *Transfer of pending suits and bar on jurisdiction.* - All suits received or registered under Section 26 and pending before any Court of a Senior Civil Judge immediately before the commencement of the Goa Civil Courts (Amendment) Act, 2004, shall, on such commencement, stand transferred to the District Court of the concerned district and such District Court may proceed to deal with such suit from the stage which was reached before such transfer or from any earlier stage or *de novo,* as

> such District Court may deem fit and no Court of any Senior Civil Judge shall entertain, try, dispose off or proceed to hear any matter where the Central Government or the Government of Goa or any officer of the Government in his official capacity, is a party to the proceedings."

3. On 16.3.2004, the said suit was pending for recording evidence of the defendants. Thereafter, the learned Civil Judge, Sr. Division, passed the impugned Judgment and Decree dated 30.4.2004, decreeing the suit in the sum of Rs.1,25,000/- with interest thereon at the rate of 6 % per annum from 15.4.1989 till payment and dismissed the counter claim filed by respondent No.1 herein.

4. Mr. Pangam, learned Counsel appearing for the appellant submitted that in view of Section 26A of the Amendment Act, the learned Civil Judge, Sr. Division, had no jurisdiction to deal with the said suit, since in terms of Section 26A all suits pending before commencement of the Amendment Act stood transferred to the District Court of the concerned District and it was the District Court to deal with the matter from that stage or from any earlier stage or *de novo* as the District Court may deem fit and proper. According

to the learned Counsel, the trial Court had no jurisdiction to deal with the matter after enactment of Section 26A of the Amendment Act. This position is not disputed by the learned Counsel appearing for the respondents. I am also in agreement with the submission made by the learned Counsel for the appellant that the trial Court, upon enactment of the Amendment Act, had no jurisdiction to proceed with the suit in view of Section 26A of the Amendment Act. Therefore, the decree passed by the trial Court is without jurisdiction and, as such, the same deserves to be quashed and set aside.

5. Accordingly, the First Appeal No.219/2004 stands allowed. The impugned Judgment and Decree dated 30th April, 2004, passed by the Civil Judge, Sr. Division, Panaji in Special Civil Suit No.137/91/A is quashed and set aside and the matter is remitted to the District Court, North Goa, at Panaji in view of Section 26A of the Amendment Act. The District Court shall deal with the said suit in terms of Section 26A of the Amendment Act.

6. The appeal is allowed in the aforesaid terms. Having regard to the fact that the suit is of the year 1991, it is expected that the

learned District Judge shall dispose of the said suit expeditiously. Having regard to the facts and circumstances of the case, the parties are left to bear their own costs. Registry to send the records of the suit expeditiously to the District Court, North Goa, at Panaji. Parties to appear before the District Judge, North Goa, Panaji on 12th April 2005 at 10.00 a.m.

A.P. LAVANDE, J.

ssm